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POLICY NOTE

AMNESTY SCHEME FOR SMUGGLED/SEIZED VEHICLES

1. The Competition Commission of Pakistan (the 'CCP') has been established, *inter alia,* to provide for free competition in all spheres of commercial and economic activity to enhance economic efficiency and to protect consumers from anti-competitive behavior. The law prohibits situations that tend to lessen, distort or eliminate competition. The mandate of the Commission '*inter alia'* is to promote competition and in this regard relevant portions of sections 28 and 29 of the Competition Act, 2010 (the "Act") state:

> *"28. **Functions and powers of the Commission**. – (1) The functions and powers of the Commission shall be –...*
> *e. to engage in competition advocacy; and*
> *f. to take all other actions as may be necessary for carrying out the purposes of this Act.*
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> *29. **Competition Advocacy**. – The Commission shall promote competition through advocacy which, among others, shall include –*
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> *b). reviewing policy frameworks for fostering competition and making suitable recommendations for amendments to this Act and any other laws that affect competition in Pakistan to the Federal Government and Provincial Governments."*

2. The Commission took notice of the recently issued SRO 172 (I)/2013 dated 5th March 2013 by the Revenue Division of the Ministry of Finance and Revenue and the subsequent concern raised by the All Pakistan Motor Dealers Association (APMA) on the said SRO that allows release of vehicles on payment of redemption fine along with duty and taxes on smuggled/ non-duty paid motor vehicles, having non-tampered engine or chassis numbers. The validity of the facility for regularizing the above-mentioned smuggled/non-duty paid motor vehicles is until 31st March, 2013. However, the SRO 172 (I)/2013 does not allow the facility of the duty and tax concessions on the import of vehicles via a Custom Station in violation of Import Policy Order and the vehicles which have since been auctioned.

3. The SRO172 (I)/2013 is a cause of concern for the Commission on the following grounds:

I. The allowable age limit for import of a car is 3 years under the latest SRO 1441 (I)/2012 issued on 12th December, 2012 by the Ministry of Commerce while there is no age limit for the smuggled/ non-duty paid motor vehicles under the SRO172 (I)/2013. The Commission is of the view that due to amnesty scheme, dissimilar conditions for imports under allowable age limits have been applied to the importers of motor vehicles through the regular normal channels in contrast to persons clearing their smuggled/non-duty paid vehicles under the SRO172 (I)/2013. As a matter of fact, the persons who have violated the law by not paying the taxes and duties have been incentivized to import motor vehicles of their choice without imposition of any allowable age restriction on them.

II. In addition, the policy under SRO172 (I)/2013 is discriminatory against the persons importing motor vehicles through normal regular channels to the extent that the facility of duty and tax concessions under SRO172 (I)/2013 has not been extended to the motor vehicles imported in violation of 'Import Policy Order' via normal channels through a custom station. On the other hand, the smuggled/non-duty paid motor vehicles anywhere in Pakistan but outside the premises of custom stations have been allowed to avail the facility of duty and tax concessions under SRO172 (I)/2013. The importers who have opted to import via normal channels but violated 'Import Policy Order' have, in fact, been discriminated in contrast to the persons possessing smuggled/non-duty paid vehicles anywhere in Pakistan.

III. Under the current prevalent policy for imports under normal channels, a person is allowed to import a motor vehicle up to 3 years old under the bag, baggage, and gift scheme. If the allowable age limit of 3 years and available depreciation allowance of 1% per month calculated from the Ist day of January subsequent to the year of manufacture under the Custom General Order (CGO) 13/2012 dated 31st August, 2012 is taken into account, an importer could avail maximum depreciation allowance of up to 48 %.

On the other hand, under the SRO172 (I)/2013, the deprecation allowance entitlement for the smuggled vehicles covered under PCT heading 87.03 (motor and other vehicles principally designed for the transport of less than 10 persons, including station wagons and racing cars) is 1% per month calculated from the Ist day of January subsequent to the year of manufacture with a maximum depreciation claim of 60% for the first five preceding years and a further depreciation allowance of 5 % per year subject to a minimum duty and taxes of US$500[1]. Similarly, for all other vehicles (motor and other vehicles principally designed for the transport of ten or more persons including vehicles greater than 1800 cc), the deprecation allowance entitlement for the smuggled vehicles is 1% per month calculated from the Ist day of January subsequent to the year of manufacture with a maximum depreciation allowance of 72% for the first six preceding years and a further depreciation allowance of 5 % per year subject to a minimum duty and taxes of Rs 100,000.

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[1] Since there is no age limit for clearance of smuggled/ non-duty paid motor vehicles under the SRO 172(I)/ 2013

If the depreciation criteria is taken into account with no time limit set for claiming depreciation under the SRO172 (I)/2013, undue advantage has been provided to the owners of the smuggled/non duty paid motor vehicles in contrast to importers under normal channels in the form of extra depreciation reward of even up to 100 % subject to the condition of a nominal minimum payment for duties and taxed such as US $ 500 and Rs 100,000. Through this facility, discriminatory treatment has been meted out to the importer of vehicles through normal channels and dissimilar conditions have been applied to them in contrast to the owners of smuggled/non duty paid motor vehicles.

IV. The scheme under the SRO172 (I)/2013 is also likely to affect the production decisions of relevant stakeholders' i.e. automobile assemblers/manufacturers. The automobile industry in Pakistan is inward looking and they plan their production decisions on the domestic demand forecasts. The market forecasts may change due to the import surge of older motor vehicles under the SRO172 (I)/2013, which may adversely affect the competitive environment for the automobile sector as some of the vehicles cleared under the SRO172 (I)/2013 act as a substitute for the vehicles assembled in the country.

V. The recent action by the government by issuing SRO172 (I)/2013 may signal to the consumers that government introduces motor vehicle amnesty scheme from time to time, as the government has done in the past. This may result in a creation of grey market for automobile vehicles in the country on sustained basis. The existence of grey market will act as a parallel market of automobile vehicles in the country and will create an unfair competition for the formal sector.

VI. The smuggled/non-duty paid motor vehicles envisaged to be cleared under the SRO172 (I)/2013 will not be subject to several tests such as roadworthiness and emission control tests as no criteria for allowable age limit has been set for clearance of the smuggled/non-duty paid motor vehicles under the subject SRO. On the other hand, the vehicles imported under the regular import channels are required to undergo roadworthiness test.

5. In view of the foregoing, it is therefore, recommended that the policy introduced under the SRO172 (I)/2013 may be reconsidered and withdrawn or suitably amended to eliminate the above mentioned discriminatory treatment resulting from the said SRO.

ISLAMABAD, the March 14, 2013